

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
MACON DIVISION**

<b>UNITED STATES OF AMERICA ,</b>  <b>v.</b>  <b>JOSEPH FAIRLEY,</b> <b>Defendant.</b>	: : : : : : : :	<b>Case No. 5:19-cr-18-MTT-CHW-4</b>
---	--------------------------------------	--------------------------------------

---

**ORDER**

Defendant Joseph Fairly entered a plea agreement to a superseding information on April 29, 2020, and was sentenced on July 29, 2020. (Docs. 162, 163, 220, 226). Defendant has now filed a motion to have the appellate record furnished without charge. (Doc. 274). In the motion, Defendant requests that the Court provide him with the appellate record and that the Court order the court reporter to transcribe and furnish the record free of charge. (*Id.*) There is no indication that the Defendant is prepared to pay the costs and fees associated with obtaining the requested documents. Instead, Defendant states that he is indigent and needs the record to challenge his sentence through a habeas corpus action, which he has not filed. (*Id.*) He also attached a letter in which he requests a copy of his docket sheet. (*Id.* p. 3).

The Court notes that there is no “appellate record” because Defendant waived his appeal and did not appeal his case. *See* (Doc. 223). However, the instant motion is not the appropriate vehicle to pursue the relief sought by Defendant. There is no appeal pending in this case, and defendant has not moved to vacate his sentence under 28 U.S.C. § 2255. As such, any request for a free transcript pursuant to 28 U.S.C. § 753(f) is premature. *See United States v. Hernandez*, 431 F. App’x 813, 813-14 (11th Cir. 2011) (citing *United States v. Horvath*, 157 F.3d 131, 132 (2d Cir. 1998); *United States v. Losing*, 601 F.2d 351, 352 (8th Cir. 1979) (“any request for a free transcript

prior to the filing of a section 2255 complaint is premature.”)). The Defendant may inquire with the Clerk of Court regarding the costs for obtaining a copy of the docket sheet. As to the sentencing hearing transcript, there is no indication in the record that a court reporter ever prepared a transcript of the sentencing hearing that occurred on July 29, 2020. Therefore, the Defendant may make arrangements with the court reporter who attended his sentencing hearing and pay the costs of having a transcript prepared if Defendant wishes to have his sentencing hearing transcribed at this time.

Because it is premature, Defendant’s motion for appellate record (Doc. 274) is **DENIED**.

**SO ORDERED**, this 4th day of April, 2023.

s/ Charles H. Weigle  
Charles H. Weigle  
United States Magistrate Judge